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09/605,818	06/28/2000	Jay S. Walker	00-001	5370

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EXAMINER	
FADOK, MARK A	

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAY S. WALKER, JOSE A. SUAREZ, SCOTT T. CASE,
MICHIKO KOBAYASHI, and ANDREW P. GOLDEN

Appeal 2008-2776
Application 09/605,818
Technology Center 3600

Decided:[1] May 5, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-11, 38-42 and 51-55. Claims 12-37, 43-50 and 56-76 have been withdrawn from consideration. These are the only claims in the application. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6 (2002).

The claimed invention is directed to systems and methods to determine the acceptability of offers based on received information related to product redemption by a third party (Specification, Abstract).

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

> 1. A method comprising:
> arranging for a customer to redeem a product from a third party;
> receiving, via an electronic communication network, information relating to a redemption, of the product and by the customer, that has occurred; and
> determining to accept an offer based on the received information.

The references of record relied upon by the Examiner as evidence of obviousness are:

Boushy	US 5,761,647	Jun. 2, 1998

Steve Kerch, *Quick Look At Quickly Selling In Tough Market 'How To Sell Your Home Fast' Offers Tips On Everything From Negotiating To Sprucing Up*, Chicago Tribune (December 30, 1993) (hereinafter "Kerch");

Robert Bruss, *No Grey Area: Selling A Site Twice Is Illegal*, Chicago Tribune (Dec. 2, 1995) (hereinafter "Bruss");

L.A. Lough, *System Designed To Grow With Area*, Richmond Times-Dispatch (Apr. 24, 1998) (hereinafter "Lough").

Claims 1, 4, 5, 7, 8, 9, 11, 38, 40, 41, 42, 51, 53 and 54 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Bruss in view of Lough; claims 2, 3, 39 and 52 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Bruss in view of Lough and Official Notice; claims 6 and 55 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Bruss in view of Lough and Kerch; and claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Bruss in view of Lough and Boushy.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the conclusion that the applied prior art does not establish the prima facie obviousness of the claimed subject matter. Therefore the rejections on appeal are reversed. Our reasons follow.

The following comprise our finding of facts with respect to the scope and content of the prior art and the differences between the prior art and the claimed subject matter. Bruss and Lough are directed to real estate transactions. The Specification discloses that an agreement product is a product which a customer agrees to purchase and an entity agrees to supply a number of units (p. 5, ll. 21-22). The entity may include a manufacturer, warehouser, department store, grocery store, gasoline station, manufacturer's customer acquisition provider or shopping and retail provider (p. 6, ll. 4-6; p. 8, ll. 5-9). Redemption information may include information specifying a particular product redeemed, a quantity of the product redeemed, a location

at which the redemption took place, a retailer at which the redemption took place, a date on which the redemption took place, a time at which the redemption took place, an amount of time required to complete the redemption, weather conditions at the time of the redemption, the name of a retailer employee assisting with the redemption, a type of product redeemed (e.g., gasoline), a total amount of money charged to the customer by the retailer, a description of any other purchases, and a total amount charged to the customer for the other purchases (p. 8, l. 24 through p. 9, l. 1).

We are persuaded by Appellants' arguments that the Examiner erred in finding that the real estate transactions disclosed in Bruss and Lough can correspond to the redemption of a product recited in independent claims 1, 38 and 51. Real estate would not have been considered a "product," as recited in independent claims 1, 38 and 51, by one of ordinary skill in the art. While limitations from the Specification are not imported in the claims, the Specification is permitted to and does provide context that the claimed "products" are sold by manufacturers, warehousers, department stores, grocery stores, gasoline stations, manufacturer's customer acquisition providers or shopping and retail providers. Real estate is not typically sold by these entities.

Moreover, the term "product" is used in conjunction with the terms "redeem" and "redemption" in the claims. Not only are real estate contracts not typically considered to be "redeemed" at any stage of the process, but the redemption information set forth in the Specification is information that is not typically associated with real estate, even under a broadest reasonable interpretation.

Accordingly, as the Examiner has not shown how the prior art renders obvious a redemption of a product as recited in independent claims 1, 38 and 51, we are constrained to reverse all rejections on appeal.

CONCLUSION AND ORDER

The rejections of claims 1-11, 38-42 and 51-55 are reversed.

REVERSED

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